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Metro Painting Corporation and Allied Trades, AFL–CIO, CLC, District Council 51 and Jose Roberto Marquez and Rafael Antonio Marquez. Cases 05–CA–036570, 05–CA–064042, and 05–CA–064491

February 28, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND GRIFFIN

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by International Union of Painters and Allied Trades, AFL–CIO, CLC, District Council 51 on April 20 and amended on August 23, 2011, and charges filed by Jose Roberto Marquez and Rafael Antonio Marquez on September 6 and 13, 2011, respectively, the Acting General Counsel issued an order consolidating cases, consolidated complaint and notice of hearing on November 30, 2011, against Metro Painting Corporation, the Respondent, alleging that it has violated Section 8(a)(4), (3), and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On January 13, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on January 17, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was received by December 14, 2011, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint are true. Further, the undisputed allegations in the Acting General Counsel’s motion disclose that the Region, by letter dated December 28, 2011, advised the Respondent that unless an answer was received by January 6, 2012, the Region would seek de-

fault judgment in this case based on the Respondent’s failure to respond to the consolidated complaint allegations. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer to the consolidated complaint, we deem the allegations in the consolidated complaint and notice of hearing to be admitted as true, and we grant the Acting General Counsel’s Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Virginia corporation with its principal office and place of business in Alexandria, Virginia, has been engaged in the business of providing commercial, industrial, and residential painting services in the Washington, D.C. metropolitan area.

During the 12-month period preceding issuance of the consolidated complaint, a representative period, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in states other than the Commonwealth of Virginia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Union of Painters and Allied Trades, AFL–CIO, CLC, District Council 51 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Vasilios Kavarligos, the Respondent’s owner, has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The Respondent has engaged in the following conduct.

1. In or around March or April 2011, the Respondent, through Kavarligos, at a residential painting project in Maryland, interrogated employees about their union activities.

2. In or around March or April 2011, the Respondent, through Kavarligos, in the shop of a Washington, D.C. high school jobsite, interrogated an employee about his union activities.

3. In or around March or April 2011, the Respondent, through Kavarligos, in the shop of a Washington, D.C. high school jobsite, interrogated employees about their union activities.

4. On about April 20, 2011, on the street outside a Washington, D.C. high school jobsite, through Kavarligos, made an unlawful promise of benefit by telling em-

ployees they would get health insurance, if they voted “no” for the Union.

5. On about August 16, 2011, at a project in or around Herndon, Virginia, through Kavarligos, interrogated employees about their union activities.

6. On about August 16, 2011, the Respondent discharged its employees Jose Roberto Marquez and Rafael Antonio Marquez.

7. The Respondent engaged in the conduct described in paragraph 6 because the named employees of the Respondent formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

8. The Respondent also engaged in the conduct described in paragraph 6 because Jose Roberto Marquez, the father of Rafael Antonio Marquez, gave testimony to the Board in the form of an affidavit.

CONCLUSIONS OF LAW

1. By the conduct described in paragraphs 1 through 5 above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By the conduct described in paragraphs 6 and 7 above, the Respondent has been discriminating in regard to the hire or tenure, or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. By the conduct described in paragraphs 6 and 8 above, the Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(4) and (1) of the Act.

4. The Respondent’s unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(4), (3) and (1) of the Act by discharging employees Jose Roberto Marquez and Rafael Antonio Marquez, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

Further, we shall order the Respondent to make whole Jose Roberto Marquez and Rafael Antonio Marquez for

any loss of earnings or other benefits suffered as a result of the Respondent’s unlawful actions against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

The Respondent shall also be required to remove from its files any and all references to the unlawful discharges of Jose Roberto Marquez and Rafael Antonio Marquez, and to notify them in writing that this has been done and that the unlawful references will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Metro Painting Corporation, Alexandria, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their union activities and support.

(b) Promising benefits to employees in order to discourage them from selecting union representation.

(c) Discharging or otherwise discriminating against employees for their union activities and for supporting International Union of Painters and Allied Trades, AFL–CIO, CLC, District Council 51 or any other labor organization.

(d) Discharging or otherwise discriminating against employees because they file charges or give testimony under the Act.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Jose Roberto Marquez and Rafael Antonio Marquez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Jose Roberto Marquez and Rafael Antonio Marquez whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges of Jose Roberto Marquez and Rafael Antonio

Marquez, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful actions will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Alexandria, Virginia, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.² Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 2011.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 28, 2012

Mark Gaston Pearce, Chairman

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

² For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT coercively interrogate you about your union activities and support.

WE WILL NOT promise benefits to you in order to discourage you from selecting union representation.

WE WILL NOT discharge or otherwise discriminate against you because of your union activities and support for International Union of Painters and Allied Trades, AFL-CIO, CLC, District Council 51 or any other labor organization.

WE WILL NOT discharge you or otherwise discriminate against you because you file charges or give testimony to the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Jose Roberto Marquez and Rafael Antonio Marquez reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Jose Roberto Marquez and Rafael Antonio Marquez whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, plus interest.

WE WILL within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharges of Jose Roberto Marquez and Rafael Antonio Marquez, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

METRO PAINTING CORPORATION